IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Pukhraj & Ors. Vs. State of Rajasthan

S.B. CR. MISC. PETITION NO. 737/2003

against the order dt.16.7.2003 passed by Additional Sessions Judge, Bali in Cr.Revision No.40/2002

DATE OF ORDER :: July 19, 2006

HON'BLE MR.H.R.PANWAR,J.

Mr. Suresh Kumbhat, for the petitioners.
Mr. Ashok Upadhyaya, P.P.

BY THE COURT:

Learned counsel for the petitioner submits that he does not want to press the criminal misc. petition filed by petitioner No.3 Himmat Ram.

The cr. misc. petition filed by petitioner No.3 Himmat Ram is, therefore, dismissed as not pressed.

I have heard learned counsel for the petitioners and the Public Prosecutor.

By the instant criminal misc. petition, the petitioners No.1 and 2 have challenged the order dt. 16.7.2003 passed by Additional Sessions Judge, Bali (for short 'the revisional court' hereinafter) in criminal revision No.40/2002, whereby the revisional court dismissed the revision petition filed by petitioners against the order dt. 31.10.2001 passed by Judicial Magistrate, Sumerpur (for short 'the trial court' hereinafter), whereby the trial court took the cognizance of the offences under sections 323/109 and 343/109 I.P.C.

I have carefully gone through the orders passed by both the courts below as also the statements recorded under section 161 Cr.P.C. by the police. The police filed a negative final report before the trial court and on the basis of evidence recorded by the police under section 161 Cr.P.C. more particularly the complainant Rekha, the trial court took the cognizance of the offences noticed above. The allegations mainly are against petitioner No.3 Himmat Ram, whose petition has been dismissed as not pressed. So far as petitioners No.1 and 2 are concerned, they are brother-in-law and sister-in-law (Jeth and Jethani) respectively of the complainant. There is no specific allegation regarding wrongful confinement or causing hurt against them. They have been implicated with the aid of section 109 Cr.P.C. On close scrutiny of the statements, prima facie, there is no

evidence of abetment so far as petitioners No.1 and 2 are concerned. In the circumstances, therefore, the order impugned qua petitioners No.1 and 2 cannot be sustained and is liable to be set aside.

Consequently, the misc. petition filed by petitioner No.3 is dismissed as not pressed. However, it will be open for him to agitate the matter at the stage of charge. So far as petitioners No.2 and 3 are concerned, the misc. petition filed by them is allowed. Order impugned qua petitioners NO.1 and 2 taking cognizance of the offences under sections 323/109 and 343/109 I.PC. is set aside.

Ad interim stay order dt. 10.11.2003 is vacated. The stay petition stands disposed of.

[H.R.PANWAR],J.

m.asif/-